



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Thomas P. Lewandowski  
One Cascade Plaza  
Akron OH 44308-1136

**COPY MAILED**

**MAR 21 2005**

**OFFICE OF PETITIONS**

In re Application of  
Shiveley  
Application No. 09/851,720  
Filed: May 9, 2001  
Docket No.: 0188.0009

:  
:  
: **DECISION ON PETITION**  
:  
:

This is a decision on the petition under 37 CFR 1.137(b), filed November 19, 2004, seeking revival of the above-identified application.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioner is advised that this is not a final agency decision.

This application became abandoned for failure to reply to the office action mailed December 5, 2003, to the above-noted correspondence address of record and which set an extendible period for reply of one month. As no extensions of time were obtained, this application became abandoned at midnight on January 5, 2004. The date of abandonment is January 6, 2004. A Notice of Abandonment was mailed October 5, 2004, to the above address, and was returned as undeliverable October 18, 2004.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (3) above.

As to item 3, the statement of unintentional delay should be made by someone associated with the application at the time of abandonment. As background, the declaration/power of attorney filed with this application appointed only Roger D.

Emerson as attorney of record, and directed that all correspondence was to be mailed to a Mr. Thomas P. Lewandowski at the address noted above. The declaration did not also indicate any registration number for Mr. Lewandowski. Perusal of the entire record contents of this file fails to reveal that either the inventor or Mr. Emerson has, over his signature, appointed any other counsel or changed the correspondence address. Accordingly, this communication will be addressed to the correspondence address of record, obsolete or otherwise.

Counsel Deron Cook asserts that a change of address was filed on or about June 28, 2004, and includes a copy thereof as Exhibit A, but notes that such was apparently not given any force and effect by the USPTO. Inspection of the copy of Exhibit A reveals that such was a customer number batch update that sought to associate number 26781, several registered practitioners (including Mr. Emerson and also Mr. Cook), and a new correspondence address, with this application. However, such was signed by a Mr. Daniel Thomson, who unfortunately was not of record as noted above and as such the customer number could not be associated with this file and the address (and registered practitioners) properly remained unchanged. See MPEP 601.03:

Under 37 CFR 1.33(a)(2), where an executed oath or declaration under 37 CFR 1.63 has been filed by any of the inventors, the correspondence address may be changed by (A) a registered attorney or agent of record, (B) an assignee as provided for under 37 CFR 3.73(b), or (C) all of the applicants ( 37 CFR 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with 37 CFR 3.71.

For the same reason, the change of correspondence address signed by Mr. Cook and filed November 19, 2004, cannot be given any force and effect, though as a courtesy, and as Mr. Emerson is, according to the registry of practitioners, reachable at the address therein given for customer No. 27,681, a courtesy copy of this decision is being mailed to that address.

It is anticipated that with an appropriately signed statement of unintentional delay a renewed petition would be granted.

Any forthcoming renewed petition should be addressed as follows:

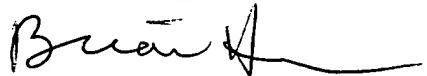
**By mail:**

**Mail Stop PETITIONS  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450**

By hand: Customer Service Window  
Randolph Building 401 Dulany Street  
Alexandria, VA 22314:

By fax: (703) 872-9306  
ATTN: Office of Petitions

Inquiries related to this decision may be made to the undersigned at (571) 272-3217.



Brian Hearn  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc:  
Mr. Roger D. Emerson  
BROUSE MCDOWELL  
388 SOUTH MAIN STREET  
SUITE 500  
AKRON, OH 44311-4407